



OFFICE MEMORANDUM

DATE: October 30, 1996

TO: District Engineers
District Field Engineers
District Construction Engineers
Resident/Project Engineers

FROM: Gary D. Taylor
Chief Engineer/Deputy Director
Bureau of Highway Technical Services

SUBJECT: CONSTRUCTION CIRCULAR LETTER 1996-5
EXTENSIONS OF CONTRACT TIME FOR INCENTIVE/DISINCENTIVE PROJECTS

It has been brought to our attention that deviation from current FHWA Technical Advisory (T5080.10) relative to extensions of contract time for Incentive/Disincentive (I/D) projects is evident on some MDOT projects.

To bring MDOT into compliance with FHWA Guidelines, extensions of contract completion dates and open to traffic dates will not be granted on projects that have provisions for incentive/disincentive pay attached to completion date and open to traffic date. It is important that changes or extras on these contracts be kept to a minimum; however, if needed, they are to be completed within the original contract dates which may in turn require additional effort on the part of the contract and appropriate cost to MDOT. The approximate cost is to be relative to the cost of doing the work and not to I/D.

The typical extension of I/D time for these projects tended to grant additional time on the controlling item for extra work and overruns. This is in tune with the 1990 Standard Specifications, Section 1.08.06, and the 1996 Standard Specifications, Sections 1.08.08 and 1.08.09. This is not consistent with the I/D concept, which was intended and reserved only for critical projects or phases of projects where traffic inconveniences and delays must be minimized.

A clear distinction should be made between the intent of I/D provisions and liquidated damages. Liquidated damages serve the prime function of recovery of construction engineering (CE) and/or additional costs associated with the contractor's failure to complete the project on time. They are addressed in the Specifications and have applicable mechanisms built within the contract for adjusting them relative to unforeseen additional work. The I/D provision; however, has no adjustment by Standard Specification because it is set up in the contract for a completely different reason. The I/D provision is intended to motivate the contractor so that work will be completed on or ahead of schedule in areas determined to have high associated user costs.

Liquidated damage provisions apply to all projects; however, I/D provisions apply only to

special projects. Therefore, Extensions of Time on new I/D projects should not be granted relative to

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Sections 1.08.06 (1990) or 1.08.08 and 1.08.09 (1996). The Design and Construction Divisions will include a special provision notifying the contractor that no allowances for extension of incentive/disincentive time for any reason will be allowed. The following substitute language should be included in all contract progress schedule provisions with I/D clauses as of today's date:

If the completion date for the incentive portion of this project is a date that will result in less than the maximum incentive, no extension of time will be allowed for increases in critical item contract quantities or extra work for the purpose of increasing the incentive portion of this contract. The contractor will be expected to adjust his work forces or work hours to compensate for the added work.

Chief Engineer/ Deputy Director

BOH:CD:PFM:JTL:jp

Subject Index: Authorizations

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